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09/441,035	11/16/1999	JOSEPH B. PRULLAGE	18794-000400	3784

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EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/441,035

Applicant(s)

PRULLAGE

Examiner
KURT ROWAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct. 20, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-10, and 12-35 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10, and 12-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

In view of the Declaration filed Oct 20, 2003, the Appeal is withdrawn and the declaration is addressed as stated below in paragraph number 6.

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 12, 26-27, 31, 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer in view of Foster et al. (4,310,985)

The patent to Pfeiffer shows an insect bait station for attracting and killing insects such as flies having a body 15 with an external groove 17. Pfeiffer discloses a poison, but does not disclose if it is an oral insecticide. The patent to Foster shows an insect bait station using a self adhering oral insecticide. In reference to claims 1, 27, 31, 33, Pfeiffer shows the external groove which extends spirally around the body. The groove of Pfeiffer can be considered longitudinal since it has depth in the longitudinal direction of the body, that is, from top to bottom. It would have been obvious to provide Pfeiffer with an oral insecticide as disclosed by Foster since merely one poison is being substituted for another and the function is the same. In reference to claim 12, Pfeiffer

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discloses hanger members in lines 76-85 of page 2. The pesticide used by Pfeiffer is self-adhering since it stays in the groove.

6. Claims 2-4, 7-10, 13-25, 28-30, 32, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer in view of Foster et al. '985 as applied to claim 1 above, and further in view of Conlee.

The patents to Pfeiffer, Foster and Conlee show insect bait stations. Pfeiffer shows a conical shape and has been discussed above. Conlee shows a cylindrical body. In reference to claims 2-3, 29, 32, 35, it would have been obvious to form the body of Pfeiffer in view of Foster as a cylinder as shown by Conlee since merely one equivalent shape is being substituted for another. In reference to claims 4, 7, Pfeiffer shows an elongated circumferential spiral groove that has a height at least two times larger than the width of the groove. In reference to claim 8, Pfeiffer shows a plurality of grooves 17b in Fig. 11. In reference to claims 9-10, Conlee does not disclose the size of the cylinder, but it would have been obvious to make the cylinder with a diameter from about 1/4 inches to about 2 inches and about 6 inches to about 18 inches in length since the size would be determined through routine experimentation. In reference to claims 13-14, neither Pfeiffer or Conlee disclose how the bait stations are made. However, it would have been obvious to extrusion mold or injection mold the bait station since both molding methods are old and well known in the art. The examiner takes Official Notice that extrusion molding and injection molding are old and well known. In reference to claims 15-19, and 35, Foster discloses

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the insecticide as a nitromethylene. In reference to claims 20, 21, 23, Conlee discloses a pest attractant reservoir for a pheromone 8 inside the body. In reference to claim 22, it would have been obvious to provide Pfeiffer with an attractant affixed to the hanger since the location of the attractant is a matter of design choice since the function is the same. In reference to claim 24, Pfeiffer and Conlee do not disclose feeding attractants, but it would have been obvious to employ a feeding attractant since merely one attractant is being substituted for another. The examiner takes Official Notice that feeding attractants are old and well known. In reference to claim 25, Pfeiffer and Conlee do not disclose a cylinder sheath to store and transport the bait station, but it would have been obvious to employ a cylindrical sheath to transport the bait station so the poison does not come into contact with nontarget species. In reference to claim 28, Pfeiffer shows several different groove configurations such as a spiral groove and a plurality of horizontal grooves vertically aligned. It would have been obvious to employ a plurality of vertical grooves since the exact groove structure is a matter of design choice to be determined by routine experimentation. In reference to claim 30, both Pfeiffer and Conlee do not disclose the groove area as a percent of the total surface area of the external surface, but it would have been obvious to employ a 30 percent groove area since the groove area would be determined through routine experimentation.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 15-19, 20-21, 24, 26, 31, 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Foster et al. '985.

The patent to Foster shows a bait station having a body 12, 13 with an external surface and one external longitudinal recessed groove for supporting a self-adhering oral insecticide TNMT. The water in fluid reservoir 19 acts as an attractant and feeding stimulant for the target species.

5. Claims 1-4, 7-8, 15-19, 25, 26, 27, 29, 31, 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Foster '977.

The patent to Foster shows a bait station for attracting and killing insects having a cylindrical body 2, an external recessed groove in grill 5 (the groove is between vertical wires that make up the grill) for supporting a self-adhering oral insecticide TNMT. Foster shows a cylindrical sheath 1. Foster shows the body 2 having an external surface orientated generally vertically surface 3.

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Response to Amendment

6. The Declaration under 37 CFR 1.132 filed Oct 24, 2003 is insufficient to overcome the rejection of claims 1-4, 7-10, 12-34, based upon Pfeiffer and Pfeiffer in view of Conlee as set forth in the last Office action because: the facts presented are not germane to the rejection at issue. The declaration states that Conlee and Pfeiffer are flat surface bait stations. This is not true. Both are either cylindrical or conical. Both show curved surfaces. Pfeiffer can be thought of as a plurality of cylinders stacked on each other which are continuous curved surfaces. Hence the comparison between a flat surface bait station and present invention are not germane to the rejection at issue. Also, as the contact between the insecticide and a user is not recited in the claims. The examiner appreciates discussion of Conlee, but the rejection stands since the declaration does not discuss the combination.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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A handwritten signature in black ink, reading "Kurt Rowan". The signature is written in a cursive, flowing style.

KURT ROWAN

PRIMARY EXAMINER

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January 12, 2004